



**DEPARTMENT OF LABOR**

Employee Benefits Security Administration

Exemptions from Certain Prohibited Transaction Restrictions

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: **PTE 2012-01, D-11676, The Kemper Corporation Pension Plan (the Plan); PTE 2012-02, D-11683, First Federal Bancshares of Arkansas, Inc. Employees' Savings and Profit Sharing Plan (the Plan); PTE 2012-03, L-11647, R+L Carriers Shared Services, LLC, et al.**

**SUPPLEMENTARY INFORMATION:** A notice was published in the Federal Register of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in

Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

- (a) The exemption is administratively feasible;
- (b) The exemption is in the interests of the plan and

its participants and beneficiaries; and

- (c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

The Kemper Corporation Pension Plan (the Plan)

Located in Chicago, Illinois

[Prohibited Transaction Exemption **2012-01**;

Exemption Application Number **D-11676**]

#### **EXEMPTION**

The restrictions of section 406(a)(1)(A) and (D), and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply, effective September 1, 2011, to the one-time, in-kind contribution (the Contribution) of shares of the common stock of Intermed, Inc. (the Stock) to the Kemper Corporation Pension Plan (the Plan)<sup>1</sup> by the Kemper Corporation (Kemper or the Applicant), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The Applicant makes cash contributions to the Plan to the extent that the cumulative proceeds from the sale of the Stock at each contribution due date (determined under section 303(j) of the Act) are less than the cumulative cash contributions the Applicant would have been required to make to

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<sup>1</sup>Prior to August 25, 2011, the Plan was known as the Unitrin,

the Plan, in the absence of the Contribution. Such cash contributions shall be made until all of the Stock contributed to the Plan is sold;

(b) The Applicant contributes to the Plan such cash amounts as are needed for the Plan to attain an Adjusted Funding Target Attainment Percentage (AFTAP) of at least 80% as of January 1, 2012, as determined by the Plan's actuary (the Actuary), without taking into account any unsold Stock as of April 1, 2012;

(c) Solely for purposes of determining the Plan's minimum funding requirements, AFTAP and funding target attainment percentage, the Actuary will not count as a Plan asset any Stock that has not been liquidated as a contribution to the Plan;

(d) For purposes of determining Plan contribution amounts, the Stock shall be considered a contribution only at the time it is sold, with the contribution amount being the lesser of the proceeds from the sale of the Stock, or the value of the Stock on the date of the Contribution as determined by the Independent Fiduciary described below;

(e) The Stock represents no more than 20% of the fair market value of the total assets of the Plan at the time it is contributed to the Plan;

(f) The Plan pays no commissions, costs or other expenses in connection with the contribution, holding or subsequent sale of the Stock and any such expenses paid by the Applicant are not treated as a contribution to the Plan;

(g) The terms of the Contribution between the Plan and the Applicant are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated parties;

(h) The Independent Fiduciary represents the interests of the Plan, the participants and beneficiaries with respect to the Contribution;

(i) The Independent Fiduciary determines that the Contribution is in the interests of the Plan and of its participants and beneficiaries and is protective of the rights of participants and beneficiaries of the Plan; and

(j) The Independent Fiduciary monitors the transaction on a continuing basis and takes all appropriate actions to safeguard the interests of the Plan to ensure that the transaction remains in the interests of the Plan, and, if not, takes appropriate action available under the circumstances.

For a more complete statement of the facts and representations supporting the Department's decision to grant

this exemption, refer to the notice of proposed exemption published on September 26, 2011 at 76 FR 59434.

EFFECTIVE DATE: This exemption is effective as of September 1, 2011.

#### WRITTEN COMMENTS AND HEARING REQUESTS

During the comment period, the Department received approximately 70 telephone calls and six written comments in response to the notice of proposed exemption. None of interested persons who contacted the Department requested a hearing. With one exception (discussed below), the telephone calls and written comments raised no substantive issues, but rather reflected the commenters' failure to fully understand the notice of proposed exemption. The Department provided explanations to each of the commenters by telephone, and each was satisfied with the responses provided by the Department.

One comment letter raised four questions and/or substantive issues. The Department asked the Applicant and the Independent Fiduciary, Fiduciary Counselors Inc., to respond to the issues and questions raised.

The commenter first inquired as to how Kemper acquired the Stock from its affiliate, Trinity Universal Insurance Company (Trinity). The Applicant responded that Kemper acquired the

shares of Intermec from Trinity via a cash transaction. Trinity received approximately \$50.8 million in cash for the shares of the Stock sold to Kemper.

The commenter then inquired if there were other subsidiaries of Kemper that own shares of the Stock. The Applicant responded that no other subsidiaries of Kemper own any shares of the Stock.

The third issue raised was that while the Independent Fiduciary determined that the Contribution is in the best interests of the Plan and its participants and beneficiaries, the commenter stated that there was no detail in the notice of proposed exemption to support this statement. The Independent Fiduciary responded to this by describing the protections that were written into the proposed exemption as conditions, citing in particular conditions (a) through (d) of the operative language above.

The Independent Fiduciary then confirmed that it performed a financial analysis of Intermec and the Stock to determine if the Contribution was an acceptable investment in the Plan. The Independent Fiduciary represents that Intermec is a global business that designs, develops, integrates sells and resells wired and wireless automated identification and data collection products and related services. Its products include mobile



computers, bar code scanners, printers, label media and radio frequency identification products and related software. Additionally, due to its acquisition of Vocollect in the first quarter of 2011, its products now include voice data and collection terminals. Intermec also offers services related to its product offerings such as training and repair services. Most of its revenue is currently generated through sales of mobile computers, barcode scanners, printers and repair services.

Intermec has, according to its President and CEO, transformed its business in recent years from that of a hardware company to a company which provides mobile business solutions. The Independent Fiduciary states that even while Intermec has repositioned itself in the market place, its balance sheet remains strong. As of December 31, 2010, assets totaled \$749 million, while liabilities were only \$288 million, with stockholders' equity at \$461 million, representing about 62% of the assets. As of July 3, 2011, assets increased to \$870 million and liabilities totaled \$414 million. Stockholders' equity of \$455 million was 52% of assets. During the quarter, Intermec borrowed \$77 million under its \$100 million credit facility. (Intermec had borrowed \$97 million to fund the acquisition of Vocollect and had repaid \$20 million as of the end of the second quarter.) This \$77 million represents only 9% of

total assets and the debt to equity ratio is just 17%.

The comment letter also asked the Independent Fiduciary if it would recommend to a pension plan the purchase of such a large number of shares of a stock that does not pay any dividends to that plan. The Independent Fiduciary responded that a dividend, or lack of a dividend, is not a determinate of whether a stock is an acceptable investment under ERISA. The letter also asked the Independent Fiduciary whether a pension plan should have 13.5% of its assets invested in one stock or own more than 10% of any one company. The Independent Fiduciary responded that it reviewed the Plan's Investment Policy to ensure that the Contribution would be an acceptable investment for the Plan. The Investment Policy permits investments in individual stocks. The Independent Fiduciary did note that this asset would account for a greater percentage of the portfolio than is typical for a single asset. However, as the proposed exemption requires liquidation of the Stock over a relatively short time period, and the conditions agreed to by Kemper provide effective downside protection with respect to the Contribution, the Independent Fiduciary determined that it was permissible for the Contribution to temporarily overweight the Plan's portfolio.

The final set of questions raised by the comment letter concerned whether the Applicant would incur all of the costs

associated with the transaction. The Applicant confirmed that one of the conditions of the proposed exemption is that Kemper will pay all commissions, costs or other expenses in connection with the Contribution, holding or subsequent sale of the Stock. Thus, the Plan will not bear any of the costs associated with the transaction.

The commenter also questioned what is to be gained by contributing the Stock to the Plan, as opposed to having Trinity sell the Stock, dividend the proceeds to Kemper and have Kemper put cash into the Plan. The Applicant responded that the participants in the Plan are better off having the Stock in the Plan because the Contribution is substantially in excess of the required minimum contributions. The proposed exemption is structured so that the Contribution only counts for funding purposes once the Stock has been liquidated by the Plan. The representations made by Kemper, as detailed in the proposed exemption, effectively eliminate any downside to the Plan from the Contribution. If the Stock were retained by Trinity, the participants would have no guarantee that the Plan would receive the proceeds from the sale of the Stock.

The Department has given full consideration to the entire record, including the comment letter received and the responses by the Applicant and the Independent Fiduciary thereto. The

Department has determined to grant the exemption as it was proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

First Federal Bancshares of Arkansas, Inc. Employees'  
Savings and Profit Sharing Plan (the Plan)  
Located in Harrison, Arkansas  
[Application No. **D-11683**  
Prohibited Transaction Exemption NO. **2012-02**]

EXEMPTION

## Section I: Transactions

Effective May 10, 2011, the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(E) of the Code,<sup>2</sup> shall not apply:

(1) to the acquisition of certain rights (the Rights) by the Plan in connection with an offering (the Offering) of shares of the common stock (the Stock) of First Federal Bancshares of Arkansas, Inc. (Bancshares) by Bancshares, a party in interest with respect to the Plan, and

(2) to the holding of the Rights received by the Plan during the subscription period of the Offering; provided that the conditions as set forth in section II of this exemption were satisfied for the duration of the acquisition and holding.

## Section II: Conditions

The relief provided in this exemption is conditioned upon adherence to the material facts and representations described,

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<sup>2</sup>For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

herein, and as set forth in the application file and upon compliance with the conditions, as set forth in this exemption.

(1) The receipt of the Rights by the Plan occurred in connection with the Offering and was made available by Bancshares on the same terms to all shareholders of the Stock of Bancshares;

(2) The acquisition of the Rights by the Plan resulted from an independent act of Bancshares, as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to the acquisition of such Rights;

(3) Each shareholder of the Stock, including the Plan, received the same proportionate number of Rights based on the number of shares of Stock of Bancshares held by such shareholder;

(4) The Rights were acquired pursuant to provisions under the Plan for individually directed investments of the accounts of the individual participants (the Invested Participants), all or a portion of whose accounts in the Plan hold the Stock;

(5) The decisions with regard to the holding and disposition of the Rights by the Plan were made by each of the Invested Participants in accordance with the provisions under the Plan for individually-directed accounts; and

(6) No brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan with respect to the

Offering, and no brokerage fees, no commissions, and no other monies were paid by the Plan to any broker in connection with the exercise of the Rights.

EFFECTIVE DATE: This exemption is effective, May 10, 2011, the commencement date of the Offering.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on November 14, 2011, at 76 FR 70505.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8540. (This is not a toll-free number.)



R+L Carriers Shared Services, LLC,  
Located in Wilmington, Ohio  
[Prohibited Transaction Exemption **2012-03**;  
Exemption Application No. **L-11647**]

#### EXEMPTION

The restrictions of sections 406(a) and (b) of the Act shall not apply to the reinsurance of risks, and receipt of premiums related therefrom, by Royal Assurance, Inc. (Royal Assurance), in connection with insurance contracts sold by Unum Life Insurance Company of America (Unum), or any successor insurance company to Unum which is unrelated, to the R+L Carriers Shared Services, LLC to provide group life, short-term disability (STD), long-term disability (LTD), and Accidental Death and Dismemberment (AD&D) insurance benefits to employees of the R+L Companies<sup>3</sup> under an employee welfare benefit plan (the Plan)<sup>4</sup>

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<sup>3</sup> The individual related employers comprising the R+L Companies are: (1) R+L Carriers Shared Services, LLC; (2) Strategic Management, LLC; (3) Paramount Transportation Logistics Services, LLC; (4) R+L Carriers Payroll, LLC; (5) Paramount Labor Leasing Southern, LLC; (6) Paramount Labor Leasing Eastern, LLC; (7) Golden Ocala Management, Inc.; (8) Royal Resorts, LLC; (9) ABCO Transportation, Inc.; (10) Spirit Express Trucking, Inc.; (11) Royal Shell Property Management, Inc.; (12) Quality Quest Linen Service, Inc.; (13) Royal Shell Vacations, Inc.; (14) AFC LS, LLC; and (15) AFC Worldwide Express, Inc. The foregoing employers, along with the captive insurer, Royal Assurance,

sponsored by the R+L Carriers Shared Services, LLC, provided the following conditions are met:

(a) Royal Assurance --

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with R+L Carriers Shared Services LLC that is described in section 3(14)(E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

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constitute the applicants requesting an individual exemption for the transaction described herein.

4 The applicants represent that Mr. Ralph "Larry" Roberts, Sr., the founder of the R+L Companies, is the owner (either directly, or indirectly through the combined voting interests of his spouse and his children) of 50 percent or more of the combined voting power of all classes of stock entitled to vote of each of the employers constituting the R+L Companies whose employees are covered under the Plan. Therefore, according to the applicants, Mr. Roberts is a party in interest with respect to the Plan for purposes of section 3(14)(E) of the Act. The applicants further represent that Mr. Roberts is the owner, either directly or indirectly, of 50 percent or more of the combined voting power of all classes of stock entitled to vote of the captive, Royal Assurance; accordingly, the applicants represent that Royal Assurance is a party in interest with respect to the Plan for purposes of section 3(14)(G) of the Act. In this regard, the Department is providing no opinion herein as to whether Mr. Roberts is a party in interest with respect to the Plan for purposes of section 3(14)(E) of the Act; similarly, the Department is providing no opinion herein as to whether Royal Assurance is a party in interest with respect to the Plan for purposes of section 3(14)(G) of the Act.

(3) Has obtained a Certificate of Authority from the Director of the Department of Insurance of its domiciliary state which has neither been revoked nor suspended;

(4) (A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or (B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Arizona) by the Director of the Arizona Department of Insurance within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plan with respect to the reinsurance of such contracts;

(d) In the initial year of any contract involving Royal Assurance, there will be an immediate and objectively determined benefit to the Plan's participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Unum or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plan only contracts with insurers with a financial strength rating of "A" or better from A. M. Best Company (A. M. Best). The reinsurance arrangement between the insurer and Royal Assurance will be indemnity insurance only, i.e., the insurer will not be relieved of liability to the Plan should Royal Assurance be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) The Plan retains an independent fiduciary to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been satisfied. For purposes of the exemption, the independent fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with an applicant (this relationship hereinafter referred to as an affiliate);

(2) Is not an officer, director, employee of, or partner in, Royal Assurance or any other applicant (or an affiliate of either);

(3) Is not a corporation or partnership in which Royal Assurance or any other applicant has an ownership interest or is a partner;

(4) Does not have an ownership interest in Royal Assurance, or any of the other applicants, or their Affiliates;

(5) Is not a fiduciary with respect to the Plan prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an "independent fiduciary," no organization or individual may serve as an independent fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Royal Assurance, any other applicant, or their affiliates (including amounts received for services as independent fiduciary under any

prohibited transaction exception granted by the Department) for that fiscal year exceeds one percent of that organization or individual's annual gross income from all sources for the prior fiscal year.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from Royal Assurance, any other applicant, or their affiliates during the period that such organization or individual serves as independent fiduciary, and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiates any such transaction during the period that such organization or individual serves as independent fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 26, 2011 at 76 FR 59441.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lefkowitz of the Department at (202) 693-8546. This is not a toll-free number.

## GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 13<sup>th</sup> day of January,  
2012.

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Ivan Strasfeld  
Director of Exemption Determinations  
Employee Benefits Security  
Administration  
U.S. DEPARTMENT OF LABOR

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